In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1474

IGNAZIO MARCHESE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 27, 1971. A petition for rehearing was denied on March 1, 1971. Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to April 30, 1971, and the petition was filed on March 16, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to support the verdict.

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner and one Cuomo were convicted of transporting a stolen security in foreign commerce and of conspiracy to commit that offense, in violation of 18 U.S.C. 2314 and 371. On October 27, 1970, petitioner was sentenced to concurrent prison terms of five years on the conspiracy charge and ten years on the substantive count. The court of appeals affirmed *per curiam* (Pet. App. A).

The evidence is set forth in the opinion below. In essence it shows that in October 1969, five United States Treasury bills, each having a face value and approximate market value of $1,000,000, were stolen from a banking concern in New York City. During that same month in New York City, co-defendant Cuomo asked an accountant, one Ploss, to negotiate one of the stolen bills in a manner which would preserve the anonymity of the owner. Ploss said that this could be done in Europe; he agreed to do so in exchange for one-half of the net proceeds above $500,000. In November 1969, Ploss went to Switzerland but the attempted negotiation resulted in his arrest, the seizure of the bill, and Ploss' deportation to the United States.

Upon Ploss' return petitioner, who had known both Ploss and co-defendant Cuomo for some time, telephoned Ploss. He told Ploss that he wanted to meet

with him and that was "worried about the money." Ploss refused to participate in any meeting and petitioner then told him to check with Cuomo.

Thereafter, in early February 1970, petitioner met Ploss. He told Ploss that he owed $250,000 for the United States Treasury bill and that his life was in danger; he asked Ploss to give back the money resulting from the bill's negotiation. Remarking that petitioner must be "crazy", Ploss stated that he had been unable to negotiate the bill and that his effort to do so had resulted in his arrest. At petitioner's request Ploss produced documents showing his arrest in Switzerland.

ARGUMENT

Petitioner's contention that the evidence was insufficient to prove his part in the conspiracy is without merit. Petitioner's statements to Ploss, after the latter had returned from his foreign travel, were sufficient to show his relationship with both Ploss and Cuomo and his participation from the start in the illegal venture. See *Opper* v. *United States,* 348 U.S. 84, 93-94. Petitioner's guilt of the substantive offense is established by familiar principles, since Ploss' travel with the stolen security in furtherance of the conspiracy was binding on petitioner. See *Pinkerton* v. *United States,* 328 U.S. 640, 646-648.

CONCLUSION

For the foregoing reasons, it is respectfully sub-

mitted that the petition for a writ of certiorari should be denied.

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MAY 1971.

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